

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

HOLLIS DONUTS INC.

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:48 I illegal deductions
RSA 275:44 IV liquidated damages

Employer: Hollis Donuts Inc., PO Box 367, Merrimack, New Hampshire 03054

Date of Hearing: April 23, 2014

Case No. 47562

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on February 14, 2014. The notice was sent to the employer and there was an objection. The claimant requested a hearing. The Notice of Hearing was sent to both parties on March 25, 2014.

The claimant is seeking an amount of \$130.50 in a check that she lost and was never replaced by the employer. The claimant reported the lost check and was told to pay \$30.00 for a replacement check and she did so. The employer later returned the \$30.00 replacement fee but the replacement check was never issued.

The claimant also testified that she was required to buy a company sweatshirt and the cost was deducted from her wages. This was done without authorization from the claimant.

The claimant also stated that she was mandated to work extra time because the store was in with another business and when the store closed the employees had to be out of the business. The claimant said that she had to bring out the trash after closing time. She was not paid for this time.

The claimant also said that the employer was willful and did not have good cause for their action(s) and so she is seeking liquidated damages.

The employer testified that she understood from a Department of Labor training session that if an employee lost a pay check, the employer did not have to provide another check for the lost check.

The employer also testified that the sweatshirts were not mandated as the store had jackets for the employees while they were on duty. If the employee wanted a sweatshirt he/she could order it voluntarily. There was no mandate to purchase the shirts. The claimant did so on her own.

The employer also testified that she was not aware of the trash disposal after hours and the employees could not get back into the business. Once she learned about this practice, it was stopped and other arrangements were made so that the employees would not have to work for any period of time after the shift ended.

FINDINGS OF FACT

RSA 275:43 I. Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee.

803.01 (a). Pursuant to RSA 275:43, I and II, every employer shall pay all wages due to his/her employees within 8 days, including Sundays, after the expiration of the workweek on regular paydays designated in advance. Biweekly payments of wages shall meet the foregoing requirement if the last day of the second week falls on the day immediately preceding the day of payment. Payment in advance and in full of the work period, even though less frequently than biweekly, also meets the foregoing requirement.

This is the section of the law that mandates an employer to pay an employee all wages due at the time the wages are due and owing.

RSA 275:48 I Withholding of Wages. – I.

No employer may withhold or divert any portion of an employee's wages unless:

- (a) The employer is required or empowered to do so by state or federal law, including payroll taxes.
- (b) The employer has a written authorization by the employee for deductions for a lawful purpose accruing to the benefit of the employee as provided in regulations issued by the commissioner, as provided in subparagraph (d) or for any of the following:
 - (1) Union dues;
 - (2) Health, welfare pension, and apprenticeship fund contributions;
 - (3) Voluntary contributions to charities;
 - (4) Housing and utilities;
 - (5) Payments into savings funds held by someone other than the employer;
 - (6) Voluntary rental fees for non-required clothing;
 - (7) Voluntary cleaning of uniforms and non-required clothing;
 - (8) The employee's use of a vehicle under RSA 261:111, III;
 - (9) Medical, surgical, hospital and other group insurance benefits without financial advantage to the employer, when the employee has given his or her written

- authorization and deductions are duly recorded; and
- (10) Required clothing not covered by the definition of uniform.
- (c) The deductions are pursuant to any rules or regulations for medical, surgical, or hospital care or service, without financial benefit to the employer and openly, clearly, and in due course recorded in the employer's books.
- (d) Upon an employee's written request, an employer may deduct the following items from the employee's wages, provided that the employer shall provide a written itemized accounting of such requested deductions to the employee at least once per month:
- (1) Voluntary contributions into cafeteria plans or flexible benefit plans, or both, as authorized by section 125 or section 132 of the Internal Revenue Code.
 - (2) Voluntary payments by the employee for the following:
 - (A) Child care fees by a licensed child care provider.
 - (B) Parking fees.
 - (C) Pharmaceutical items, gift shop, and cafeteria items purchase on site of a hospital by hospital employees.
 - (3) Voluntary installment payments of legitimate loans made by the employer to the employee as evidenced by a document that includes the following:
 - (A) The time the payments will begin and end.
 - (B) The amounts to be deducted.
 - (C) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.
 - (4) Voluntary payments for the recovery of accidental overpayment of wages when the following conditions are met:
 - (A) The recovery is agreed to in writing.
 - (B) The deduction for the overpayment begins one pay period following the date the parties execute the written agreement.
 - (C) The written agreement specifies:
 - (i) The date the recovery of the overpayment will begin and end.
 - (ii) The amount to be deducted, which shall be agreed upon by the employer and the employee but which shall, in no event, be more than 20 percent of the employee's gross pay in any pay period.
 - (iii) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.
 - (5) Voluntary payments for the recovery of tuition for non-required educational costs paid by the employer for the employee to an educational institution when the specific deduction is authorized in writing prior to the deduction as evidenced by a document that includes the following:
 - (A) The time the payments will begin and end.
 - (B) The amounts to be deducted.
 - (C) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.
 - (6) Voluntary payments for the employee's use of a health or fitness facility that is sponsored by the employer for the benefit of its employees and that is located within the employer's facility or workplace, or operated by a private health and fitness facility that offers discounted memberships of 50 percent or more to all employees of the employer, as evidenced by a document that includes the

following:

- (A) The time the payments will begin and end.
 - (B) The amounts to be deducted.
 - (C) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.
- (e) The employee requests in writing that deductions may be made for contributions to a political action committee from the employee's wages.
- (f) The employer has a written request from the employee, made at the time of the original request without coercion or pressure, that authorizes the employer to deduct from the employee's final wages at the termination of employment any amount the employee may owe for voluntary payments for vacation pay, paid time off pay, earned time pay, personal time pay, annual pay, sick pay, sick dependent pay, and bereavement pay made pursuant to a written employment policy as required by RSA 275:49, III, when the payments have been requested and paid to the employee in advance of eligibility.

This part of the law explains when and how deductions can be made from wages.

RSA 275:44 IV

The claimant can request liquidated damages when there is a finding that the employer was willful and/or did not have good cause for their action(s).

It is the finding of the Hearing Officer, based on the written submissions and the testimony presented for the hearing, that the Wage Claim is valid in part and invalid in part. The claimant has the burden to show that there are wages due and owing and she met part of this burden. The law is clear that an employee has to be paid for work performed. In this case it is found that the claimant did perform work and was not paid. The claimant lost the check and the employer must re-issue another check. There can be a service charge but the whole check cannot be considered lost, once it is reported missing. This part of the Wage Claim is valid in the amount of \$130.50.

The employer was credible in her testimony about the sweatshirt. It is found that the claimant purchased the shirt voluntarily and it was not a part of the employment process to wear the shirt. This claim is invalid.

The issue of reported time after the business closed for the evening is also invalid. The employer was again credible in her testimony that once she learned of this practice, the practice was stopped. This request is also invalid.

There is no finding that the employer was willful and/or did not have good cause for their action(s). The employer acted based on their belief of the law. This is not a willful act. The employer also corrected a problem once the problem became known to the employer. This again was not a willful act by not knowing there was a problem.

The Wage Claim is valid in the amount of \$130.50. All other issues are invalid.

DECISION AND ORDER

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due to an employee, and as this Hearing Officer finds that the claimant proved by a preponderance of the evidence that she was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$130.50.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$130.50, less any applicable taxes, within 20 days of the date of this Order.

There is no finding for illegal deductions, unrecorded time or liquidated damages.

/s/

Thomas F. Hardiman
Hearing Officer

Date of Decision: May 16, 2014

Original: Claimant
cc: Employer

TFH/clc